

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Sukha Ram Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.223/1988)

S.B. Criminal Appeal under Section 374
Cr.P.C. against the judgment dated 19.5.1988
passed by the District & Sessions Judge,
Merta City in Criminal Original Case
No.40/85.

Date of Judgment: APRIL 2,2007

P R E S E N T

HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.A.K.Acharya, for the appellant

Mr.J.P.S.Choudhary, Public Prosecutor

BY THE COURT:

1. The appellant Sukha Ram has preferred this appeal under Section 374 Cr.P.C. against the judgment of District & Sessions Judge, Merta City, whereby he

has been convicted of offence under Section 304 Part-II I.P.C. and sentenced to undergo 5 years rigorous imprisonment and a fine of Rs.1000/-; in default of payment to further undergo 6 months rigorous imprisonment.

2. Briefly stated the facts of the case are that on 23.10.1985 Gayad Singh lodged a written F.I.R. stating therein that on 22.10.1985 at about 11:00 A.M. three brothers Baxa Ram, Sukha Ram and Swaroopa Ram fought inter se and because of the injuries received Baxa Ram died on 23.10.1985, whose dead body is lying in his house. On this information, a case under Section 302 I.P.C. was registered and after usual investigation a charge-sheet against Sukha Ram and Swaroopa Ram under Section 302 I.P.C. was submitted.

3. Accused Sukha Ram and Swaroopa Ram denied the charges framed under Section 302, 447 I.P.C. and in alternative 302/34 I.P.C. and claimed trial. The prosecution in all produced 14 witnesses in support of its case. The accused persons in their statement under Section 313 Cr.P.C. denied the allegations levelled by the prosecution witnesses against them. In defence one person was examined. The trial court after hearing both the parties acquitted the accused

Swaroop Ram for offence under Sec.302,447 and alternate charge under Sec.302/34 I.P.C. but convicted accused Sukha Ram of offence under Section 304 Part-II I.P.C. and sentenced as stated above. He was acquitted for offence under Sec.447 I.P.C.

4. Both the parties were heard. The entire record was gone through.

5. The learned counsel for the appellant has argued that the only eye-witnesses namely P.W.2 Mangudi and P.W.11 Chandra Ram the daughter and brother-in-law of the deceased respectively have been produced and no other independent witness has supported the story of the prosecution. P.W.11 Chandra Ram merely a chance witness and not the resident of the village where this incident took place. Both are interested witnesses. The contradictions and discrepancies found in their statements clearly shows that the accused Sukha Ram is not responsible for the injuries caused to deceased Baxa Ram. The learned District & Sessions Judge while relying on the evidence of P.W.2 Mangudi and P.W.11 Chandra Ram acquitted accused Swaroopa Ram and simply on the unreliable evidence the accused Sukha Ram has been convicted. There are also injuries on the person of accused Sukha

Ram about which no explanation is forthcoming from the prosecution side. So on the basis of unreliable testimony conviction of appellant Sukha Ram cannot be based and the prosecution has failed to establish the case against appellant Sukha Ram beyond reasonable doubt. Hence he has pleaded for his acquittal.

6. Contrary to this, the learned Public Prosecutor has argued that simply because prosecution witnesses are relatives of the deceased, is not a ground to discard the testimony. Their testimony is reliable and trustworthy. Deceased Baxa Ram's daughter P.W.2 Mangudi is an uneducated girl of 13 years only. She being of tender age whatever minor discrepancies occurred are bound to be because of human conduct and psychology. More so her evidence was recorded after lapse of time. Whatever she has observed or saw has been narrated by her. The learned District & Sessions Judge rightly convicted the accused appellant Sukha Ram for offence under Section 304 Part-II I.P.C. No interference is called for in the judgment of the learned lower court.

7. A bare perusal of the testimony adduced by the prosecution story reveals that there are only two eye-witnesses P.W.2 Mangudi and P.W.11 Chandra Ram.

The other two eye-witnesses have turned hostile and they have not supported the prosecution in regard to the testimony tendered by P.W.2 Mangudi and P.W.11 Chandra Ram.

8. P.W.14 Dr.Madan Singh Choudhary has deposed that on 24.10.1985 he conducted the post-mortem of the dead body of Baxa Ram and gave a report Ex.P16, which reveal the cause of death of the deceased was due to brain haemorrhage and brain injury resulting in neurogenic shocks. At the same time as per his version, in this case death can be due to cervical spinal injury. Ultimately death is due to neurogenic shocks meaning thereby that death of Baxa Ram is not a natural one but because of the head injury he died. So this is a case of culpable homicide.

9. The learned District & Sessions Judge has convicted the accused Sukha Ram for the offence under Section 304 Part-II I.P.C. & has not found the accused guilty under Section 302 I.P.C. as there was no intention to cause death. Though the learned Sessions Judge has not discussed as to why the offence under Section 302 I.P.C. was altered to offence under Section 304 Part-II I.P.C. at the time of arriving conclusion and has not assigned any reason, but there is no State

appeal, so the only offence for which a discussion can be for offence under Section 304 Part-II I.P.C.

10. P.W.2 Mangudi has clearly stated that on the day of occurrence she was grazing animals of Harsukh Ram in her field and at about 12 noon accused Sukha Ram and Swaroopa Ram came in a bullock cart and while passing through their field her father objected to the entry, both the accused armed with lathies, gave lathi blows to her father. Sukha Ram accused inflicted a lathi blow on the head of her father and on the neck a lathi blow was struck by accused Swaroopa Ram due to which her father fell down. The incident of this fight was narrated by her to Gangasingh and Kumbha Ram.

11. P.W.6 Kumbha Ram has stated that Mangudi came to his house and told about the fight took place between her father and uncles and because of that her father died. He wrote Ex.P4 F.I.R. and lodged it in the Police Station. Same version was given by P.W.8 Ganga Singh.

12. P.W.11 Chandra Ram, who is the resident of another village and brother-in-law of deceased Baxa Ram has deposed that on the day of incident at about 12-12:30 he was on the field of Baxa Ram, where accused Sukha Ram and Swaroopa Ram came in a

bullock cart and wanted to pass through the field. When Baxa Ram objected to it they belaboured Baxa Ram with lathies. Sukha Ram struck a lathi blow on the head of Baxa Ram. Swaroopa Ram also struck a lathi blow on the neck of Baxa Ram. Because of the injuries received, Baxa Ram died the next day. This witness is relative of the deceased and he could not withstand the cross examination conducted by the counsel for the accused.

13. It is most unnatural that if any fight between Baxa Ram on one side and his brothers on other side took place in his presence but he never talked to any body and went straight to his village. His version also does not find support from the police statement and the statement given in court. The contradictions and discrepancies clearly reveals that he is not at all a reliable witness and his presence at the place of occurrence becomes doubtful. Being a chance witness and the relative of deceased Baxa Ram his version is to be seen with caution. Such discrepancies and contradictions if gone through does not inspire confidence about his version. For what purpose he came to the village of Baxa Ram has not been narrated by him. He is a resident of village Badnokha which is 7-8 Kms. away from the place of occurrence. Had Baxa Ram

been injured in his presence he would have certainly taken him to the hospital but against the norms of human conduct he left Baxa Ram in injured condition in the field itself & went to his village, which is most uncommon conduct of Chandra Ram and against the human psychology also. So his testimony can very safely be discarded. The learned counsel for the accused appellant has also pleaded that the statement of P.W.2 Mangudi can also not be relied on as there are discrepancies and contradictions from the statement whatever she has deposed in court and the statement given to the police Ex.P2.

14. P.W.2 Mangudi is a tender child witness of 13 years age and it is normal for the villagers to graze the animals either in their field or in field of others. P.W.2 Mangudi has stated that at the time of incident she was grazing animals of Harsukh Ram. When both her uncle came in a bullock cart and belaboured her father, when her father restricted them, she was there. A lathi blow was given by Sukha Ram on the head of her father and another lathi blow was hit by Swaroopa Ram on the neck of her father. There was none to save her father. Chandra Ram came there, but he ran away because accused persons chased him for beating. She came to

her residence and narrated about the story to Kumbha Ram and Gangasingh. P.W.8 Gangasingh has supported the versions of Mangudi that Mangudi came to his house and told about a fight took place in between her father and the accused persons. Whatever minor discrepancies and contradictions, which have occurred in the statement of P.W.2 Mangudi are bound to appear because a tender child of 13 years age when deposes after lapse of more than 1½ years then such minor contradictions and discrepancies may happen or occur and it is not possible for a tender child to narrate with such minute details about the incident. Her presence is most probable and natural as she was grazing animals in the field and also about the narration of the story to Gangasingh and Kumbha Ram. As both the accused were her uncles so it was not difficult for her to give details about the fighting which took place. She has not exaggerated the incident and whatever she saw has been deposed by her.

15. Though the eye witness produced by the prosecution is close relative and is a child witness, is not alone is sufficient to discredit the testimony . A child witness's statement is to be appreciated cautiously. Here the statement of P.W.2 Mangudi a child

witness is wholly satisfactory, true, reliable and inspire confidence about the story which goes to show that it was Sukha Ram, who was responsible for the head injury of deceased Baxa Ram, which ultimately culminated into the death of Baxa Ram. Hence, the guilt against accused Sukha Ram is well proved for the offence under which he has been held guilty and punished by the learned District & Sessions Judge, Merta City.

16. So the appeal of accused Sukha Ram fails and is dismissed. He is on bail. The trial court will take steps to seek his custody and make him to suffer the remaining sentence awarded by the court.

(BHANWAROO KHAN) J.

BKS/-